

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

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| JOSE MARIA VIERA, a/k/a Jose Maria Sanchez, a/k/a Jose Sanchez, a/k/a Jose Maria Viera Sanchez, Plaintiff, vs. WARDEN DARIN YOUNG, SDSP HEALTH SERVICES ADMINISTRATION STAFF WORKERS, Defendants. | 4:16-CV-04146-KES ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING CASE |
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Plaintiff, Jose Maria Viera, filed this lawsuit under 42 U.S.C. § 1983. The case was referred to Magistrate Judge Veronica Duffy under 28 U.S.C. § 636(b)(1)(B) for the purpose of preparing a report and recommendation regarding various motions.

On June 28, 2017, the magistrate judge submitted her report and recommended that Viera's complaint (Docket 1) be dismissed without prejudice for failure to exhaust his administrative remedies under 42 U.S.C. § 1997e(a), that his motions for counsel and recusal (Docket 6) be denied as moot, and that SDSP Health Services Administration Staff Workers' motion for joinder (Docket 21) be granted.

Viera was notified in the report and recommendation that he had 14 days to file objections to the report. Viera did file an objection to the report and recommendation that addresses the merits of his claim, but not address his

failure to exhaust administrative remedies. Even though no objections were filed that would require de novo review under *Thompson v. Nix*, 897 F.2d 356 (8th Cir. 1990), the court reviewed the matter de novo and finds that the magistrate judge's report and recommendation is adopted in full. Viera has provided no evidence to show that he properly exhausted his administrative remedies as is required before he can bring his claims in federal court. See *Woodford v. Ngo*, 548 U.S. 81, 103 (2006). Additionally, Viera seeks this court's recusal from this matter. Although Viera disagrees with the court's rulings in previous cases, he has not set forth any reasons that would require the court to recuse in this matter. As a result, his motion to recuse is denied. Therefore, it is

ORDERED that:

1. Viera's motion for this court to recuse (Docket 6) is denied.
2. SDSP Health Services Administration Staff Workers' motion to join in Young's motion to dismiss (Docket 21) is granted.
3. Young and SDSP's motion to dismiss for failure to exhaust administrative remedies (Docket 12) is granted.
4. Viera's motion for appointment of counsel (Docket 6) is denied as moot.
5. The report and recommendation of the magistrate judge (Docket 23) is adopted in full.

6. Viera's complaint is dismissed without prejudice for failure to exhaust his administrative remedies.

Dated August 10, 2017.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE